IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

Tax Case No. 1105 of 2008

Commissioner of Income Tax
Chennai. ... Appellant/Respondent

Vs.

Shri. C.V.Sunny ... Respondent/Appellant

Tax Case filed under Section 260-A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Madras 'D' Bench, Chennai, dated 23.11.2007 made in IT (SS)A No. 155/Mds/2005 against the Order of the Commissioner of Income Tax Appeals II Coimbatore dated 29.08.2005 in ITA.No. 341-C/04-05 in the assessment Year 1997-98 to 2003-04. against the Order of the Asst Commissioner of Income Tax Central Circle II Coimbatore dated 29.12.2004 in GI.No. PA.No AGEPS 1475K in the assessment Year 01.04.1996 to 26.11.2002.

For Appellant : M/s. K.G.Usha Rani
for Mr.T.R.Senthil Kumar

For Respondent : Mr.S.Sridhar

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J.)

This Tax Case has been filed by the Revenue under Section 260-A of the Income Tax Act, 1961 aggrieved by the order passed by the Income Tax Appellate Tribunal, dated 23.11.2007 made in IT (SS)A No. 155/Mds/2005 Block Assessment period from 01.04.1996 to 26.11.2002.

2. The Block Assessment was made in pursuance of search under Section 132 of the Act at the business and residential premises of the Assessee on 26.11.2002. Notice under Section

158 BC was served on 04.03.2003. The Assessee filed his block return only on 24.09.2003.

3. The learned Tribunal by the impugned order had merely remanded the case back to the Assessment authority with the following observations:-

> "42. In view of the facts and circumstances of the case, we direct the assessing officer to confine to determination of undisclosed income only on "net asset" basis based on the materials and evidences found during the course of search, if it is not reflected in the regular books of accounts. Further we make it clear that undisclosed income has to be determined in accordance with law since the Assessee is liable to pay tax only upon such income which is includible in total income as per law and which can be lawfully assessed in the hands of the Assessee. The Law empowers the Income tax officer to assess the income of an Assessee according to law and determine the tax payable thereon. In doing so he can not assess an Assessee on an amount, which is not taxable in law, even if the same is shown by an Assessee. There is no estoppel by conduct against law nor is there any waiver of the legal right as much as the legal liability to be assessed otherwise than according to the mandate of the law. It is always open to an Assessee to take the plea that the figure, though shown in his return of total income is not taxable in law. We placed reliance on the Judgement of the Calcutta High Court in the case Maynak Podar (HUF) vs. WTO (Cal) (262 Income Tax Return 633). Further in the case of National Thermal Power Co. Limited., vs., CIR (12998)(229 Income Tax Return 383) it was held that the purpose of an assessment proceeding before the taxing authority is to assess correctly the tax liability of the Assessee in accordance with law. This ground of appeal of the Assessee is allowed."

4. In pursuance to the said remand direction, Assessment Authority has passed fresh assessment orders on 20th March 2018, a copy of which has been produced by the learned counsel for the Assessee. It was perused by the learned counsel for the Revenue. The same is taken on record.

5. In view of the remand proceedings being concluded by the direction of the Tribunal, the present Tax Case filed by the Revenue has become infructuous. Accordingly, the Tax Case is dismissed as infructuous. No costs.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

vsg

TO

1.The Assistant Registrar,
Income Tax Appellate Tribunal,
D bench, Chennai.

2.The Commissioner of Income Tax Appeals II,
Coimbatore.

3.The Assistant Commissioner of Income Tax,
Central Circle II,
Coimbatore.

+1cc to Mr.Senthil Kumar, Advocate, S.R.No. 9921
+1cc to Mr.Sridar, Advocate, S.R.No. 9851

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MV(CO)
GN(18/03/2019)